

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 177/Srt/2021 (AY: 2008-09)**

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| Paresh DanabhaiKalsariya, 104, Vasudev Apartment, Manimohan Society, Trikamnagar, L.H. Road, Surat-395006. PAN No. ACFPK 2556 E | Vs. | Commissioner of Income Tax (Appeals), NFAC, Delhi. |
| Appellant/ assessee | | Respondent/ revenue |

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|---------------------------|----------------------------|
| Appellant represented by | Shri Kiran Shah, CA |
| Respondent represented by | Shri J.K. Chandnani, Sr.DR |
| Date of hearing | 11/05/2022 |
| Date of pronouncement | 11/05/2022 |

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) /National Faceless Appeal Centre (NFAC), Delhi dated 09/09/2021 for the Assessment year (AY) 2008-09.
2. At the outset of hearing, the Id. Authorised Representative (AR) of the assessee submits that in case of assessee, the assessment was completed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act) on 08/03/2016. In the assessment order, the Assessing Officer made addition on account of unexplained investment of Rs. 1.69 crores. The Assessing officer made addition on account of unexplained investment in

property situated at Survey No. 104, Magdalla, Surat. On appeal before the Id. CIT(A), the appeal of the assessee was allowed by the Id. CIT(A)-3, Surat vide his order dated 30/06/2016 in appeal No.CAS/3/495/357/511/529/2015-16. The Id. CIT(A) adjudicated the appeal of assessee along with three other co-owners and deleted the entire addition. Against the order of Id. CIT(A), the Revenue filed appeal before the Tribunal. The appeal of Revenue was registered as ITA No. 2304/Ahd/2016 and was adjudicated vide order dated 25/10/2019 wherein appeal of Revenue was dismissed. The Id. CIT(A)/NFAC after two years from the dismissal of appeal, passed another order of dismissal of assessee's appeal on 09.09.2021, which was already and was subject matter of appeal before Tribunal. The Id. AR of the assessee submits that once the appeal of revenue was dismissed by the Tribunal and order of first appellate authority attains finality. The Id. CIT(A)/NFAC has no jurisdiction to adjudicate the similar issue again. The Id. AR of the assessee submits that he has placed on record the order passed by the Id. CIT(A) on 30.06.2016 and the order of the Tribunal dated 25/10/2019 passed in assessee's case as well as in other nine co-owners cases in the same order. The Id. AR submits that passing of the fresh order is harassment to the assessee and the assessee has no option except to file

the present appeal for quashing the same. The Id. AR for the assessee prayed for setting aside the order of Id. CIT(A)/NFAC dated 09/09/2021.

3. On the other hand, the Id. Sr. DR for the Revenue tried to defend the order passed by the Id. CIT(A) and submits that the order passed by the Id. CIT(A) was not uploaded on the portal of the department, therefore, the appeal was transferred to NFAC and was adjudicated afresh. The Id. Sr. DR for revenue further submits that as the order was not uploaded on the portal, the order passed by the Id. CIT(A) on 30/06/2016 is not a valid order.
4. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. We have also seen the order passed by the Id. CIT(A)-3, Surat on 30/06/2016 as well as fresh order /second order passed by the Id. CIT(A)/NFAC on 09/09/2021. We have also perused the order of the Tribunal dated 25/10/2019, wherein nine appeals filed by the revenue was dismissed in ITA No(s). 386 to 388, 396, 2220 to 2222 and 2304/Ahd/2016. We find that the addition made in the assessment order passed under Section 143(3) r.w.s. 147 of the Act dated 08/03/2016 under Section 69B of Rs. 1.69 crores was deleted by the Id. CIT(A) in his order dated 30/06/2016 (supra). Not only in case of assessee, the similar addition was deleted by the Id. CIT(A) in two other co-owners' case in his common order. Against the order of Id. CIT(A)

dated 30/06/2016, the Revenue filed appeal before the Tribunal. The appeal of present assessee was registered as ITA No. 2304/Ahd/2016 and adjudicated vide common order dated 25/10/2019 wherein the order of Id. CIT(A) was affirmed and appeal of Revenue was dismissed.

5. In our view, the course of action as provided under law is to file appeal before the Hon'ble Jurisdictional High Court against the order of Tribunal, if the revenue has any grievance against the order passed by Tribunal. The Revenue authorities instead of filing of appeal, picked up the appeal of assessee again and dismissed the same vide order dated 09/09/2021 i.e. after about 23 months after passing the order by the Tribunal. Now the Id. Sr.DR tried to defend the order of the ground that the order passed by the Id. CIT(A) was not uploaded on the portal of department and for such reason the order passed on 23.06.2016 is not valid order. The assessee has no role in loading or uploading of the order of Id. CIT(A) on the portal of the Revenue. We fail to convince ourselves that if the order was not valid order for want of non-uploading, how the Revenue has assailed the said order before the Tribunal. No such plea was raised by the revenue while contesting the merits of said order was raised before the Tribunal. If we assume that the stand of revenue is correct and the appeal was re-adjudicated for the reason that the order of Id. CIT(A) was not uploaded, the revenue authorities is well equipped with the power conferred under

section 154 to recall the subsequent order as the first order has already merged with the order of Tribunal. In our view, it is clear misuse of power by revenue authorities. The assessee has been unnecessary put on a disadvantageous position. As recorded above, the recourse for revenue available under the law was to approach the Hon'ble High Court and not to pass fresh order to nullify the order of Tribunal. In these circumstances, the appeal of assessee is allowed, the order of Id. CIT(A)/NFAC dated 09/09/2021 is quashed and set aside.

6. We find that the assessee has paid appeal fees of Rs. 10,000/- and Rs. 100/- as court fees is affixed on authority letter, besides that the assessee may have also incurred some other Misc. expenses and cost of fees for the counsel to represent the appeal before the Tribunal, therefore, we also quantify the appeal expenses as Rs. 1000/- thereby a cost of Rs. 11,000/- is awarded to the assessee. The assessing office is directed to give effect of this order within a week of receipt of this order. The Ld. jurisdictional CIT(A) is also directed to take immediate remedial action if in other co-owners case, the revenue has acted in a similar fashion and migrated the appeals which were already adjudicated before implementing the face less appeal scheme.
7. In the result, this appeal of the assessee is allowed with cost.

Order pronounced in the open court on 11th May 2022 at the time of hearing appeal.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 11/05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat